IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3101 of 1991
with
CIVIL APPLICATION No.6096 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVAJI UPADHYAY

Versus

NATIONAL FEDERATION OF INDUSTRIAL COOPERATIVES LTD

Appearance:
Mr.R.K. Kothari for MR SN SOPARKAR for Petitioner
MR Bipin Mehta for Respondent No. 1
Mr.Harin Raval for Ahmedabad Unit of respondent no.1

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 20/01/2001

COMMON ORAL JUDGEMENT

The petition was filed by the petitioner claiming relief that the respondents be commanded not to terminate

the petitioner's services and require the respondents to absorb the petitioner as a regular employee with effect from 1.4.1987 or from such a date as the Court deem fit and proper. Interim relief was also prayed for and the same was in terms of para 7B to the effect that during pendency and final disposal of this petition an injunction be granted restraining the respondent from terminating the petitioner's services.

2. This Court issued rule and notice as to interim relief returnable on 17.6.1991 and also issued ad interim direction not to terminate the services of the petitioner till then, on 29.4.1991. The order sheet does not show that the said interim relief was got extended until once again, on 12.8.1992 the Court passed an order to the effect that,

"Ad interim relief granted earlier by this Court on 29.4.1991 is confirmed."

It is required to be noted that after the order of granting ad interim relief was passed on 29.4.1991 the matter was adjourned from time to time, but the ad interim relief was not got extended. Therefore, there was no question of confirming the ad interim relief granted earlier by this Court. Thereafter, the matter came to be placed on Board only in the year 2000 on 16.6.2000, on which day the matter was adjourned to 30.6.2000. On 30.6.2000 the following order was passed :

"Mr.Amar Bhatt, L.A. for Mr.S.N.Soparkar for the petitioner. Mr.Bhatt, ld. advocate submitted on behalf of the petitioner that he has received the instruction from his client that the petitioner has not received the salary from January 1994 to May 1995 and April 1997 to February 1999. He will like to ascertain as to what is the present position. .. .."

The matter was then adjourned to 14.7.2000.

3. Thereafter, the original petitioner filed a Civil Application No.6096 of 2000 wherein a relief was sought for to the effect that the respondent be directed to make payment of Rs.32,050/-, as per the details furnished in Annexure 'A' to the application. Said details are reproduced hereunder for ready reference :

"Outstanding amount of Shivaji Upadhyay

Date	Number of months	Salary Rs.	Bonus Rs.	Medical Rs
1.4.90 to 31.3.91	12	--	350/-	1000/-
1.4.91 to 31.3.92	12	--	350/-	1000/-
1.4.92 to 31.3.92	12	--	350/-	1000/-
1.4.93 to 31.3.94	9	3150/-	350/-	1000/-
1.4.94 to 31.3.95	5	1750/-	350/-	1000/-
1.4.95 to 30.6.95	3	1050/-	350/-	1000/-
1.7.96 to 31.3.97	--	--	350/-	1000/-
1.4.97 to 31.3.98	12	4200/-	350/-	1000/-
1.4.98 to 31.3.99	12	4200/-	350/-	1000/-
1.4.99 to 31.3.2000	12	4200/-	350/-	1000/-
Total	89	18,550/-	3500/-	10,000/-

Salary Rs.18,550/-
Bonus Rs. 3,500/-
Medical Rs.10,000/-

Total : Rs.32,050/-

4. A perusal of statement at Annexure 'A' shows that he has not been paid salary from 1.4.1993 to 31.3.2000. The statement also shows that the benefits like bonus and medical were not paid to the petitioner from 1.4.90 to

31.3.2000.

5. On merits the case of the petitioner is that the petitioner had applied for and was appointed as a Peon by the respondents by an order dated 20.5.1987 issued by its OSD, a copy of which is produced at Annexure 'A' to the petition. It is the case of the petitioner that he was at that stage appointed upto 30th June 1987. Said appointment was for all practical purposes permanent appointment as the petitioner was appointed against a clear vacancy. Details are set out in para 2.3 of the petition that from time to time by various orders as shown in that para, the petitioner's appointment was continued from 1.4.1987 to 30.4.1991. The petitioner has also produced a copy of the last order dated 28.2.1991, under which the petitioner's appointment would come to an end on 30.4.1981. The petitioner has also relied upon certain letters which were written by the Branch In charge of the respondent who requested the Managing Director of respondent at New Delhi seeking sanction for regularizing the petitioner's services. The petitioner has also placed reliance on the contents of an inter office memo dated 1.4.1984 written by the Deputy Manager (Marketing) of Ahmedabad Branch, whereby the Managing Director of the respondent was requested, which read as under :

"As the Branch was in need of his services he (petitioner) was given extension from time to time."

"As the Branch is in need of a regular peon and Mr.Shivaji Upadhyay is working in this Branch since more than 2 1/4 years and his work and conduct have been found satisfactory, it is recommended that Shri Shivaji may please be regularized. Minimum wages of unskilled labourer in the State of Gujarat are as follows :

Wages Rs.316.50 per month
D.A. Rs.296.40 per month

Rs.612.90 per month

It is further recommended that he may please at least be paid the minimum wages.

Submitted for sanction please."

6. Mr.Bipin Mehta, learned advocate appearing for the National Federation of Industrial Cooperatives Ltd., has submitted that almost all the offices in the country are closed and only one or two employees at various offices are continued to see that they are able to take care of the properties of the respondent. At Ahmedabad office one Mr.Y.M. Patel is continued in service and since 1994 there is no work at Ahmedabad office and therefore, there is no question of making any payment to the petitioner. Mr.Bipin Mehta submitted that so far as the salary claimed by the petitioner upto 31.3.1994 is concerned he is not able to point out the reasons for which the said salary is not paid to the petitioner.

7. Mr.Raval, appearing for respondent, National Federation of Industrial Cooperative Ltd., Ahmedabad unit has submitted that though no reply is filed either in the petition or to the Civil Application, the case is that the entire federation at the national level has gone into liquidation and practically there are no funds from which any payment could be made.

8. Taking into consideration the totality of the circumstances and also the fact that interim relief which was granted on 29.4.1991 was not got extended until the order came to be obtained on 12.8.1992, the petitioner does not deserve any relief.

9. In view of the aforesaid discussion, Special Civil Application No.3101 of 1991 fails and stands dismissed. Rule is discharged. Interim relief, if any, stands vacated. No order as to cost.

10. Civil Application No.6090 of 2000 also fails in view of the order passed in the main matter. However, it is made clear that if the petitioner has any legitimate claim which he can agitate at this belated stage, it will be open for him to agitate before appropriate forum.

(Ravi R. Tripathi, J.)

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